IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1481 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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ABDUL KADAR HUSSAIN MUNSHI - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR IH SYED for Applicant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/08/2007

ORAL JUDGMENT

1. Rule. Mr.K.T.Dave, learned Additional Public Prosecutor, waives service of rule on behalf of the respondent – State.

2. By way of this petition, under Articles 226 and 227 of the Constitution of the India, the petitioner – original informant has prayed for appropriate Writ, direction and/or order directing the respondents to register FIR at the instance of substance of the information supplied by the petitioner at Annexure – A to the petition.

3. It appears from the record that as one another FIR is registered at Kosamba, Police Station, Surat on 18.07.2007 being C.R.I-72/2007 at the instance of some another informant in which incident in question is also mentioned in the said complaint, FIR at the instance of the petitioner on the basis of the information at Annexure – A is not registered. The controversy which is raised in the petition is now already covered by the Hon'ble Supreme Court in the case of ***Upkar Singh v/s. Ved Prakash and Ors.*** reported in *(2004) 13 SCC 292* and in para 23 the Hon'ble Supreme Court has observed as under:

> *"23. Be that as it may, if the law laid down by this Court in T. T. Antony's case is to be accepted as holding a second complaint in regard to the same incident filed as a counter complaint is prohibited under the Code then, in*

our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given herein below i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to books. This cannot be the purport of the Code."

4. Under the circumstances, the respondents are directed to register the FIR at the instance of substance of the information supplied by the petitioner at Annexure – A to the petition and are directed to further investigate the same in accordance with law. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

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